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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/806,410	03/23/2004	Wendy Zellen	1358-11	2308

58388 7590 04/26/2007

GOWAN INTELLECTUAL PROPERTY
1075 NORTH SERVICE ROAD WEST
SUITE 203
OAKVILLE, ON L6M-2G2
CANADA

EXAMINER	
TRAN LIEN, THUY	
ART UNIT	**PAPER NUMBER**
1761	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/26/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)	
	10/806,410	ZELLEN ET AL.	
	Examiner	Art Unit	
	Lien T. Tran	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *09 March 2007*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,6-12,14 and 17-20* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,6-12,14, 17-20* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

The 112 first and second paragraph rejections are hereby withdrawn because applicant's argument is found to be persuasive.

Claims 1,6-12, 14,17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kincs et al in view of Peleg et al and the book " Professional Baking".

Kincs et al disclose a pie crust comprising flour, water and frozen oil system. The oil can be soybean oil, cottonseed oil, peanut oil, corn oil and combinations thereof. Kincs et al do not disclose that the oil is winterized; thus, the oil is non-winterized (see page 2 lines 28-47, col. 4 lines 13-16, col. 5 lines 1-10). Kincs et al also disclose a process to make pelletized shortening. The process comprises the steps of melting vegetable oil such as it is liquefied and chilling the oil to solidify it to form pellets. The vegetable oil will typically be primarily soybean oil, cottonseed oil, peanut oil, corn oil and combinations thereof. The chilling takes place at temperature range of about 12.8-35 degree C, depending upon the vegetable oil being processed. The pellets are used in making dough products such as pie crusts, pizza crust and the like. The dough products comprise ingredients such as flour, sweeteners, egg, milk and water. (see col. 1 lines 30-44, col. 2 lines 28-47, lines 62-65, col. 4 lines 13-16, col. 5 lines 1-8)

While Kincs et al disclose using the solidified oil in pie crust, they do not disclose the specific formulation of the crust as claimed. Also, they do not disclose the processing temperature and the temperature of water and flour and the steps of cooling water, the temperature of the solidified fat and mixing the cooled water with the flour and frozen oil/fat.

Peleg et al disclose a pie crust and method of making it. They disclose the

components of the pie crust and the composition as shown in column 2. They also teach to use water chilled to a temperature range of 1.6-7.1 degree C to form the dough. They teach conventional dough forming procedure for forming the crust including the step of chilling the flour components to a temperature of less than about 9.9 degree C. (col. 2, col. 4 lines 1-10)

The textbook teaches the pie dough should be kept cool about 15 degree C during mixing and make-up to keep the consistency of the fat and for gluten development.

Kincs et al teach to make pie crust; thus, it would have been obvious to one skilled in the art to use any known dough formulation to make the crust. Such formulation is exemplified in the Peleg et al teaching. It would also have been obvious to vary the formulation depending on the type of crust wanted and the flavor, texture desired. Such variation would have been within the skill of one in the art. While the oil in Kincs et al is not frozen to the same temperature as claimed, Kincs et al teach the temperature can vary depending upon the vegetable oil being processed. Thus, it would have been obvious to use lower temperature when the oil being processed requires lower temperature to solidify. The temperature is a result-effective variable which can be determined by one skilled in the art. It would also have been obvious to chill the flour and water and to carry out the mixing at the cooled temperature for the reason taught by Peleg et al and the baking textbook. Such processing steps are conventional as shown by the prior art. The amount of up to 50% comprising shaved, flaked or ground ice include 0 amount of such component. Furthermore, it is notoriously well known in the art

to use ice to make chilled water and both Peleg and the textbook teach to use chilled water in the making of pie crust.

In the response filed 3/9/2007, applicant argues Kincs teaches to provide an oil/fat system which clearly has a freezing point well above the range of –35 to 5 degree C. This argument is not persuasive. It is true that Kincs et al do not disclose the specific temperature claimed. However, they do teach that the temperature for solidifying the oil depends upon the vegetable oil being processed. It is well known and as applicant demonstrates in the specification that different types of oil will have different temperatures at which they solidify. Thus, it would have been obvious to vary the temperature at which the oil solidifies depending on the type of oil and the degree of hardness desired. This is a result-effective variable which is well within the determination of one in the art through routine experimentation. The oils disclosed by Kincs et al include soybean oil, cottonseed oil, peanut oil, corn oil; the instant specification discloses some of the same oil. Thus, it is obvious the oil can be solidified at the temperature claimed. Applicant states it cannot be said that the oils used by Kincs are the same as the claimed oil. The oils disclosed by Kincs et al include some of the same oil as disclosed in the instant specification. Applicant argues that the difference in the nature of the oil does lead to a novel pie crust which is not suggested by the teachings of Kincs. While stating this, applicant has not shown that the claimed pie crust is indeed different from the crust prepared using the solid oil disclosed by Kincs.et al and the nature of the oil is not different because Kincs discloses some of the same oil disclosed.

With respect to the Peleg reference, applicant argues Peleg does not teach replacing the standard fat with oil having the specific freezing point claimed. The Peleg reference is relied upon for the teaching of forming pie crust using chilling water and the step of chilling the flour. It is not relied upon for the teaching of using vegetable oil that has been solidified. Applicant argues both the Peleg and the Professional Baking references do not provide any basis for making any conclusions on the nature of the oil and/or fat used. This is true; however, the references are not relied upon for the teaching of the nature of the oil and/or fat used. The Kincs et al reference already provides such teaching. Applicant cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Applicant's arguments filed 3/9/07 have been fully considered but they are not persuasive.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T. Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Monday, Wed-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cano Milton can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

April 25, 2007

Lientran
LIEN TRAN
PRIMARY EXAMINER
Group 1700

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